Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOZO KAMI

Appeal No. 97-3110
Application 08/437,956[1]

HEARD: June 10, 1998

Before McCANDLISH, Senior Administrative Patent Judge, and PATE and NASE, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1 through 21.[2] No other claims are pending in the application.

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[1] Application for patent filed May 10, 1995.

[2] None of the amendments filed after the final rejection has been entered by the examiner.

Appellant's invention relates to a rear chassis system for a motor vehicle. As disclosed in appellant's specification, the chassis system comprises a pair of rear wheel suspension assemblies 2 each having a plurality of link arms 5-9.[3] Link arms 5 and 7 through 9 are pivotally connected at their inner or base ends to arm brackets 12 (defined as ?pivoting portions? in claim 1) on a fuel tank 1. The fuel tank 1 comprises upper and lower shell portions 17U and 17L and an inner frame 16 disposed between the upper and lower shell portions.

The brackets 12 for link arms 5 and 7 through 9 are fixed to portions of tank 1 at regions where the shell of the tank is joined to frame 16. Thus, the link arms 5 and 7 through 9 are attached to the tank through their associated brackets 12. Additional brackets, described as mount brackets 13, are fixed to tank 1 and receive bolts 11 for attaching tank 1 to the

[3] The recitation of "suspension arms" in the last line of claim 1 lacks strict antecedent basis. We have interpreted this recitation to refer back to the claimed "link arms." Although this informality does not obscure the metes and bounds of the claimed invention, it nevertheless is deserving of correction in the event of further prosecution before the examiner.

main frame 3 of the vehicle. The link arm 6 is pivotally connected to a separate arm bracket 12 which is fixed to one of the mount brackets 13 such that link arm 6 is attached to the tank through the associated brackets 12 and 13.

Claims 1 and 18 are the only independent claims on appeal. A copy of these claims, as they appear in the appendix to appellant's brief, is appended to this decision.

The following references are relied upon by the examiner as evidence of obviousness in support of his rejection under 35 U.S.C. § 103:

Washizu et al. (Washizu)	4,991,867	Feb. 12, 1991
Robertshaw (British Patent)	794,737	May 7, 1958
Kohira[4] (Japanese Patent)	05-008643	Jan. 19, 1993

Appealed claims 1 through 21 stand rejected under 35

[4] Translation attached.

U.S.C. § 103 as being unpatentable over Kohira in view of Robertshaw and Washizu. Appealed claims 1 through 21 additionally stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellant regards as his invention.

With regard to the rejection of the appealed claims under the second paragraph of § 112, the examiner's difficulty with the claim language centers on the recitation in claim 1 that the link arms are directly attached to the fuel tank and on the recitation in claim 18 that the link arms are directly pivotably mounted to the fuel tank. With respect to this language, the examiner states:

> With regard to Issue I, both claims 1 and 18 positively recite ?suspension arms? (claim 1) and ?link arms? (claim 18) being ?directly attached to the fuel tank?, however, it is plain to see that this is not the case. For example, referring to figure [sic, figures] 1 and 4, it can be seen that the ?link arms? 5-9 are directly attached to respective arm brackets (12) which are in turn connected to the fuel tank (1), this arrangement making it

> impossible for the link arms to be ?directly attached? to the fuel tank as claimed because they are already directly attached to the arm brackets (12). See also, in the specification, page 3, lines 33-35 and page 4, lines 21-24. [Answer, page 3.]

In his main brief (see page 8), appellant concedes that the link arms are connected through the arm brackets 12 to the fuel tank, but nevertheless contends that the link arms are directly attached to the tank and that such direct attachment is effected through the arm brackets.[5] This argument is untenable.

It is well established patent law that words in a claim are to be given their ordinary and accustomed meaning unless it appears that the inventor used them differently in his specification. Lantech, Inc. v. Keip Machine Company, 32 F.3d 542, 546, 31 USPQ2d 1666, 1670 (Fed. Cir. 1994). See also In

[5] Appellant's reply brief contains an additional discussion regarding the rejection under the second paragraph of § 112. The examiner, however, has refused entry of the reply brief (see Paper No. 21 mailed July 16, 1997).

re Barr, 444 F.2d 588, 597, 170 USPQ 330, 339 (CCPA 1971).

In the present case, the ordinary, literal meaning of the recitation concerning the direct attachment of the link arms to the fuel tank in claims 1 and 18 signifies that there are no intervening structural components between the link arms and the tank. It is self-evident that the link arms cannot be directly attached to the tank in the ordinary sense if the link arms are attached to the tank through a bracket or some other structural component. It therefore is inaccurate and unclear to recite that the link arms are directly attached to the fuel tank when, in fact, they are attached through the arm brackets to the tank. In this regard, it is well settled that claims in an application must accurately define the invention. See In re Knowlton, 481 F.2d 1357, 1366, 178 USPQ 486, 492 (CCPA 1973) (the claim language must be clear and accurate so as to define the metes and bounds of the invention). Furthermore, claim 1, among others, is explicitly ambiguous in that it first recites that the link arms are pivotally secured to the pivoting portions (i.e., the arm brackets) and then recites, in contradistinction, that the link arms are directly

attached to the fuel tank.

Appellant's specification is of no avail in clarifying the claim language at issue. In fact, the specification reflects the same ambiguity in that it states on the one hand that the link arms are pivotally attached to the arm brackets 12 on the fuel tank (see, for example, page 3, lines 33-35) and on the other hand that the link arms are directly attached to the fuel tank (see, for example, page 2, lines 2-3). As we understand counsel's explanation of the claim language at issue at the oral hearing, the recitation that the link arms are directly attached to the tank is used in a selective sense in that it is intended to exclude the presence of intervening frame structures, such as the prior art sub-frame 7 in the Kohira reference, but not brackets such as the arm brackets 12 of appellant's invention.

While it is true that appellant may be his own lexicographer, the patent specification nevertheless must support the definition which is now asserted. See, e.g., Jonsson v. The Stanley Works, 903 F.2d 812, 819, 14 USPQ2d

1863, 1870 (Fed. Cir. 1990). In short, appellant may not after the fact attempt to draw a distinction between the claim language and the ordinary meaning of that language when the distinction was not previously set forth in the specification. Furthermore, a definition in the specification which distorts the common meaning of a term or phrase is not permissible and renders the claim in which that term or phrase appears indefinite. In re Barr, 444 F.2d at 597, 170 USPQ at 338.

For the foregoing reasons, we will sustain the examiner's rejection of claims 1 through 21 under the second paragraph of § 112.

Since no reasonably definite meaning can be ascribed to the indefinite claim language discussed supra, we cannot compare the subject matter of claims 1 through 7, 11, 12, and 17 through 20 with the prior art applied in the § 103 rejection without resorting to speculation and conjecture. We are therefore constrained to reverse the § 103 rejection of these claims in light of the holdings in In re Steele, 305 F.2d 859, 863, 134 USPQ 292, 295 (CCPA 1962) and In re Wilson,

424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). It should be understood, however, that this reversal of the § 103 rejection of claims 1 through 7, 11, 12 and 17 through 20 is not a reversal predicated on the

merits of the § 103 rejection, but instead is a procedural reversal predicated on the indefiniteness of the claim language.

To the extent that the language encompassed by dependent claims 8 through 10, 13 through 16 and 21 is understood, we cannot agree that the features added by these dependent claims are taught or suggested by the applied references to support a conclusion of obviousness. We must therefore reverse the § 103 rejection of claims 8 through 10, 13 through 16 and 21.

In summary, the rejection of claims 1 through 21 under the second paragraph of § 112 is affirmed, and the rejection of claims 1 through 21 under § 103 is reversed.

Since at least one rejection of each appealed claim has

been sustained, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

HARRISON E. McCANDLISH, Senior Administrative Patent Judge	)
WILLIAM F. PATE, III Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND) INTERFERENCES

)
JEFFREY V. NASE)
Administrative Patent Judge)

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APPENDIX

1. A rear chassis system for a motor vehicle, comprising:

fuel tank unit including an outer shell mounted on a vehicle body, and pivoting portions integrally provided on the outer shell; and

a pair of rear suspension assemblies including link arms having base ends pivotally secured to said pivoting portions of on said fuel tank unit so that the base ends of the link arms are directly attached to the fuel tank unit.

18. A rear chassis lfor a motor vehicle, comprising:

a fuel tank unit including a fuel tank and directly mounted on a vehicle using a plurality of mount brackets which are fixed to said fuel tank, said fuel tank unit also having arm brackets fixed to said fuel tank; and

a pair of rear wheel suspension assemblies including link arms having base ends pivotally mounted to said arm brackets whereby said link arms are directly mounted to said fuel tank unit.